

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 9, 2003

SENATE BILL

No. 18

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65351, 65453, and 65560 of, and to add Sections 65351.1 and 65562.5 to, the Government Code, to amend Sections 7050.5 and 7054 of the Health and Safety Code, and to amend Sections 5097.9, ~~5097.77~~, 5097.91, 5097.92, 5097.94, 5097.96, 5097.97, 5097.98, 5097.99, and 5097.995, ~~and 21084~~ of, to add Sections 5097.10, 5097.96.1, 5097.96.2, 5097.96.3, 5097.96.4, 5097.96.5, 5097.993, 21084.3, and 21097 to, and to amend the heading of Chapter 1.75 (commencing with Section 5097.9) of Division 5 of, the Public Resources Code, relating to Traditional Tribal Cultural Sites, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional Tribal Cultural Sites.

(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

This bill would establish the Traditional Tribal Cultural Site (TTCS) Register and would require the commission to develop, maintain, and administer it, as specified. The bill would declare various powers and

duties of the commission, *including the duty to determine whether a proposed development project may affect a TTCS and whether that project will result in a substantial adverse change in a TTCS*. The bill would establish procedures for challenging and reviewing the commission's decisions, including procedures to protect the confidentiality of any information that would create a risk of harm to a TTCS. The bill would exempt the TTCS Register from disclosure as a public record. The bill would make it a misdemeanor to intentionally release information about a TTCS, knowing that it is required to be held confidential, thereby creating a new crime and imposing a state-mandated local program.

(2) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.

This bill would create additional exemptions from CEQA ~~and prohibit other exemptions for certain projects involving a TTCS~~, *but would prohibit an exemption from CEQA for a project that the commission determines may cause a substantial adverse change in a TTCS*. The bill would specify certain unique procedures that a lead agency must follow when a project ~~involves~~ *may adversely affect* a TTCS. By imposing these additional duties on lead agencies, ~~this~~ *the* bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.



With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Native Americans have used, and continue to use, natural
4 settings, referred to as “Traditional Tribal Cultural Sites”, in the
5 conduct of ceremonies and spiritual practices that provide the
6 moral and ethical foundation of Native societies and are essential
7 elements in tribal cultural traditions.

8 (2) Native American places of spiritual and ceremonial
9 importance reflect the tribes’ continuing cultural ties to the land
10 and to their ancestral heritage.

11 (3) These sites are used for prayer, vision quests,
12 medicine-making, and traditional ceremonies. They are
13 considered holy and sacrosanct by California’s Native American
14 people. Many are significant to the tribes’ cultural society and to
15 their continued existence as a people.

16 (4) To further and perpetuate the cultural tradition and spiritual
17 practices of California tribes, these Traditional Tribal Cultural
18 Sites ~~should be preserved whenever possible~~ *require preservation*.

19 (5) California had the largest aboriginal population in North
20 America before contact with non-Native Americans. Yet,
21 California Native American tribes suffered the greatest losses
22 from termination, removal and assimilation policies, including the
23 loss of a majority of their lands and Traditional Tribal Cultural
24 Sites. This devastation debilitated tribal cultural identity and
25 threatened the survival of California Native American people.

26 (6) In addition to the lingering effects of these historic policies,
27 the continued loss of Traditional Tribal Cultural Sites ~~in the past~~
28 ~~150 years~~ *for more than the past three centuries* has caused further



1 debilitating impacts on the cultural traditions and tribal identity of
2 California Native Americans.

3 (b) In recognition of Native American tribal sovereignty and
4 the unique relationship between California state government and
5 California tribal governments, it is the intent of the Legislature, in
6 enacting this act, to accomplish all of the following:

7 (1) Recognize that Traditional Tribal Cultural Sites are
8 essential elements in tribal cultural tradition and identity.

9 (2) Provide protection for Traditional Tribal Cultural Sites
10 through listing on a confidential registry overseen by the Native
11 American Heritage Commission, and establish a legal framework
12 by which sites listed on, or eligible for listing on, the Traditional
13 Tribal Cultural Sites Registry may be defended and preserved.

14 (3) Protect the access to and ability of Native Americans to
15 engage in cultural and traditional practices in a meaningful way at
16 Traditional Tribal Cultural Sites through the facilitation of access
17 agreements and other methods of providing legal assurances to
18 both land owners and Native American tribes.

19 (4) Require meaningful consultation ~~between~~ *among the*
20 *Native American Heritage Commission, property owners, public*
21 *agencies, project proponents, and Native American tribes at the*
22 *earliest possible point in the planning, acquisition, and the*
23 *environmental review of a proposed development project that*
24 *might adversely impact a Traditional Tribal Cultural Site.*

25 (5) Provide for the development of treatment agreements,
26 *programmatic agreements*, and mutually acceptable mitigation
27 agreements, and promote the avoidance of development of
28 Traditional Tribal Cultural Sites.

29 (6) *Provide a measure of protection to Traditional Tribal*
30 *Cultural Sites on public lands and state-managed federal lands.*

31 SEC. 2. Section 815.3 of the Civil Code is amended to read:

32 815.3. Only the following entities or organizations may
33 acquire and hold conservation easements:

34 (a) A tax-exempt nonprofit organization qualified under
35 Section 501(c)(3) of the Internal Revenue Code and qualified to
36 do business in this state, that has as its primary purpose the
37 preservation, protection, or enhancement of land in its natural,
38 scenic, historical, agricultural, forested, or open-space condition
39 or use.



1 (b) The state or a city, county, city and county, district, or other
2 state or local governmental entity, if otherwise authorized to
3 acquire and hold title to real property and if the conservation
4 easement is voluntarily conveyed. No local governmental entity
5 may condition the issuance of an entitlement for use on the
6 applicant's granting of a conservation easement pursuant to this
7 chapter.

8 (c) A federally recognized California Indian tribe or a
9 nonfederally recognized California Indian tribe, band, or nation
10 listed on the Native American Contact List maintained by the
11 Native American Heritage Commission pursuant to subdivision
12 (d) of Section 5097.94 of the Public Resources Code.

13 SEC. 3. Section 65040.2 of the Government Code is amended
14 to read:

15 65040.2. (a) In connection with its responsibilities under
16 subdivision (l) of Section 65040, the office shall develop and adopt
17 guidelines for the preparation and content of the mandatory
18 elements required in city and county general plans by Article 5
19 (commencing with Section 65300) of Chapter 3 of Division 1 of
20 Title 7. For purposes of this section, the guidelines prepared
21 pursuant to Section 50459 of the Health and Safety Code shall be
22 the guidelines for the housing element required by Section 65302.
23 In the event that additional elements are hereafter required in city
24 and county general plans by Article 5 (commencing with Section
25 65300) of Chapter 3, the office shall adopt guidelines for those
26 elements within six months of the effective date of the legislation
27 requiring those additional elements.

28 (b) The office may request from each state department and
29 agency, as it deems appropriate, and the department or agency
30 shall provide, technical assistance in readopting, amending, or
31 repealing the guidelines.

32 (c) The guidelines shall be advisory to each city and county in
33 order to provide assistance in preparing and maintaining their
34 respective general plans.

35 (d) The guidelines shall contain the guidelines for addressing
36 environmental justice matters developed pursuant to Section
37 65040.12.

38 (e) The guidelines shall contain advice including
39 recommendations for best practices to allow for collaborative land
40 use planning of adjacent civilian and military lands and facilities.



1 The guidelines shall encourage enhanced land use compatibility
2 between civilian lands and any adjacent or nearby military
3 facilities through the examination of potential impacts upon one
4 another.

5 (f) The guidelines shall contain advice for addressing the
6 effects of civilian development on military readiness activities
7 carried out on all of the following:

8 (1) Military installations.

9 (2) Military operating areas.

10 (3) Military training areas.

11 (4) Military training routes.

12 (5) Military airspace.

13 (6) Other territory adjacent to those installations and areas.

14 (g) The guidelines shall contain advice for consulting with
15 Native American tribes and the Native American Heritage
16 Commission for the preservation of sites listed in the Traditional
17 Tribal Cultural Site Register established under subdivision (a) of
18 Section 5097.96 of the Public Resources Code, including
19 procedures for protecting the confidentiality of information
20 concerning the specific identity, location, character or use of those
21 sites. “Native American tribe” and “Traditional Tribal Cultural
22 Site Register” shall have the meanings provided in Section
23 5097.10 of the Public Resources Code.

24 (h) The office shall provide for regular review and revision of
25 the guidelines established pursuant to this section.

26 SEC. 4. Section 65351 of the Government Code is amended
27 to read:

28 65351. During the preparation or amendment of the general
29 plan, the planning agency shall provide opportunities for the
30 involvement of citizens, public agencies, public utility companies,
31 Native American tribes identified on the Native American Contact
32 List maintained by the Native American Heritage Commission
33 pursuant to subdivision (d) of Section 5097.94 of the Public
34 Resources Code, and civic, education, and other community
35 groups, through public hearings and any other means the city or
36 county deems appropriate.

37 SEC. 5. Section 65351.1 is added to the Government Code, to
38 read:

39 65351.1. Prior to adoption, revision, amendment, or update of
40 a city or county’s general plan, the city or county shall consult with



1 the Native American Heritage Commission and any appropriate
2 Native American tribes identified on the Native American Contact
3 List maintained by the commission for the purpose of preserving
4 the sites listed in the Traditional Tribal Cultural Site Register
5 (“TTCS Register”) that are located within the city or county’s
6 jurisdiction. An “appropriate Native American tribe” and “TTCS
7 Register” shall have the meanings provided in Section 5097.10 of
8 the Public Resources Code. Consistent with the guidelines
9 developed by the Office of Planning and Research pursuant to
10 Section 65040.2, cities and counties shall protect the
11 confidentiality of information concerning the specific identity,
12 location, character, or use of the listed sites.

13 SEC. 6. Section 65453 of the Government Code is amended
14 to read:

15 65453. (a) A specific plan shall be prepared, adopted, and
16 amended in the same manner as a general plan, except that a
17 specific plan may be adopted by resolution or by ordinance and
18 may be amended as often as deemed necessary by the legislative
19 body. Adoption or amendment of a specific plan shall be subject
20 to the consultation requirements of Section 65351.1.

21 (b) A specific plan may be repealed in the same manner as it is
22 required to be amended.

23 SEC. 7. Section 65560 of the Government Code is amended
24 to read:

25 65560. (a) “Local open-space plan” is the open-space
26 element of a county or city general plan adopted by the board or
27 council, either as the local open-space plan or as the interim local
28 open-space plan adopted pursuant to Section 65563.

29 (b) “Open-space land” is a parcel or area of land or water that
30 is essentially unimproved and devoted to an open-space use as
31 defined in this section, and that is designated on a local, regional
32 or state open-space plan as any of the following:

33 (1) Open space for the preservation of natural resources,
34 including, but not limited to, sites listed in the Native American
35 Traditional Tribal Cultural Site Register established under Section
36 5097.96 of the Public Resources Code, areas required for the
37 preservation of plant and animal life, including habitat for fish and
38 wildlife species; areas required for ~~ecologic~~ *ecological* and other
39 scientific study purposes; rivers, streams, bays and estuaries; areas
40 adjacent to military installations, military training routes, and



1 restricted airspace that can provide additional buffer zones to
2 military activities and complement the resource values of the
3 military lands; and coastal beaches, lakeshores, banks of rivers and
4 streams, and watershed lands.

5 (2) Open space used for the managed production of resources,
6 including, but not limited to, forest lands, rangeland, agricultural
7 lands and areas of economic importance for the production of food
8 or fiber; areas required for recharge of groundwater basins; bays,
9 estuaries, marshes, rivers and streams which are important for the
10 management of commercial fisheries; and areas containing major
11 mineral deposits, including those in short supply.

12 (3) Open space for outdoor recreation, including, but not
13 limited to, areas of outstanding scenic, historic and cultural value;
14 areas particularly suited for park and recreation purposes,
15 including access to lakeshores, beaches, and rivers and streams;
16 and areas that serve as links between major recreation and
17 open-space reservations, including utility easements, banks of
18 rivers and streams, trails, and scenic highway corridors.

19 (4) Open space for public health and safety, including, but not
20 limited to, areas that require special management or regulation
21 because of hazardous or special conditions such as earthquake
22 fault zones, unstable soil areas, flood plains, watersheds, areas
23 presenting high fire risks, areas required for the protection of water
24 quality and water reservoirs, and areas required for the protection
25 and enhancement of air quality.

26 SEC. 8. Section 65562.5 is added to the Government Code, to
27 read:

28 65562.5. ~~When designating open space for the preservation of~~
29 *If land designated, or proposed to be designated, as open space*
30 *contains a site listed in the Traditional Tribal Cultural Site Register*
31 *established under Section 5097.96 of the Public Resources Code,*
32 ~~cities and counties~~ *the city or county in which the site is located*
33 *shall consult with the Native American Heritage Commission and*
34 *the appropriate Native American tribe, as defined by Section*
35 *5097.10 of the Public Resources Code, for the purposes of*
36 *determining the level of confidentiality required to protect the*
37 *specific identity, location, character, or use of the listed site, and*
38 *developing proper treatment of the site in any corresponding*
39 *management plan, if one will be developed for the listed area.*



1 SEC. 9. Section 7050.5 of the Health and Safety Code is
2 amended to read:

3 7050.5. (a) Every person who knowingly mutilates or
4 disinters, wantonly disturbs, or willfully removes any human
5 remains in or from any location other than a dedicated cemetery
6 without authority of law is guilty of a misdemeanor, except as
7 provided in Section 5097.99 of the Public Resources Code. This
8 subdivision does not apply to any person carrying out an
9 agreement developed pursuant to subdivision (o) of Section
10 5097.94 of the Public Resources Code or to any person authorized
11 to implement Section 5097.98 of the Public Resources Code.

12 (b) In the event of discovery or recognition of any human
13 remains in any location other than a dedicated cemetery, there shall
14 be no further excavation or disturbance of the site or any nearby
15 area reasonably suspected to overlie adjacent remains until the
16 coroner of the county in which the human remains are discovered
17 has determined, in accordance with Chapter 10 (commencing with
18 Section 27460) of Part 3 of Division 2 of Title 3 of the Government
19 Code, that the remains are not subject to the provisions of Section
20 27491 of the Government Code or any other related provisions of
21 law concerning investigation of the circumstances, manner and
22 cause of any death, and the recommendations concerning the
23 treatment and disposition of the human remains have been made
24 to the person responsible for the excavation, or to his or her
25 authorized representative, in the manner provided in Section
26 5097.98 of the Public Resources Code. The coroner shall make his
27 or her determination within two working days from the time the
28 person responsible for the excavation, or his or her authorized
29 representative, notifies the coroner of the discovery or recognition
30 of the human remains.

31 (c) If the coroner determines that the remains are not subject to
32 his or her authority and if the coroner recognizes the human
33 remains to be those of a Native American, or has reason to believe
34 that they are those of a Native American, he or she shall contact,
35 by telephone within 24 hours, the Native American Heritage
36 Commission.

37 SEC. 10. Section 7054 of the Health and Safety Code is
38 amended to read:

39 7054. (a) (1) Except as authorized pursuant to the sections
40 referred to in subdivision (b), every person who deposits or



1 disposes of any human remains in any place, except in a cemetery,
2 is guilty of a misdemeanor.

3 (2) Every licensee or registrant pursuant to Chapter 12
4 (commencing with Section 7600) or Chapter 19 (commencing
5 with Section 9600) of Division 3 of the Business and Professions
6 Code and the agents and employees of the licensee or registrant,
7 or any unlicensed person acting in a capacity in which a license
8 from the Cemetery and Funeral Bureau is required, who, except as
9 authorized pursuant to the sections referred to in subdivision (b),
10 deposits or disposes of any human remains in any place, except in
11 a cemetery, is guilty of a misdemeanor that shall be punishable by
12 imprisonment in a county jail not exceeding one year, by a fine not
13 exceeding ten thousand dollars (\$10,000), or both that
14 imprisonment and fine.

15 (b) Cremated remains may be disposed of pursuant to Sections
16 7054.6, 7116, 7117, and 103060.

17 (c) Subdivision (a) of this section does not apply to the reburial
18 of Native American remains under an agreement developed
19 pursuant to subdivision (o) of Section 5097.94 of the Public
20 Resources Code, or implementation of a recommendation or
21 agreement made pursuant to Section 5097.98 of the Public
22 Resources Code.

23 SEC. 11. The heading of Chapter 1.75 (commencing with
24 Section 5097.9) of Division 5 is amended to read:

25

26 CHAPTER 1.75. NATIVE AMERICAN ~~HISTORICAL, CULTURAL,~~
27 *HERITAGE* AND TRADITIONAL TRIBAL CULTURAL SITES.

28

29 SEC. 12. Section 5097.9 of the Public Resources Code is
30 amended to read:

31 5097.9. A public agency and a private party using or
32 occupying public property, or operating on public property, under
33 a public license, permit, grant, lease, or contract made on or after
34 July 1, 1977, may not in any manner whatsoever interfere with the
35 free expression or exercise of Native American religion as
36 provided in the United States Constitution and the California
37 Constitution; nor shall any such agency or party cause significant
38 and irreparable damage to a Native American sanctified cemetery,
39 place of worship, religious or ceremonial site, or sacred shrine
40 located on public property, except on a clear and convincing



1 showing that the public interest and necessity so require. The
2 provisions of this chapter shall be enforced by the commission,
3 pursuant to Sections 5097.94 and 5097.97.

4 This chapter may not be construed to limit the requirements of
5 the California Environmental Quality Act (Division 13
6 (commencing with Section 21000)).

7 *Nothing in this section may be construed to nullify protections*
8 *for Native American cemeteries under other statutes.*

9 SEC. 13. Section 5097.10 is added to the Public Resources
10 Code, to read:

11 5097.10. As used in this chapter, the following terms have the
12 following meanings:

13 (a) “Appropriate Native American tribe” means a Native
14 American tribe determined by the commission to have attached
15 traditional tribal cultural significance to the TTCS at issue.

16 (b) “Commission” means the Native American Heritage
17 Commission.

18 (c) “Consultation” means the meaningful and timely process
19 of seeking, discussing, and considering carefully the views of
20 others, in a manner that is cognizant of all parties’ cultural values,
21 and where feasible, seeking agreement. Consultation between
22 government agencies and Native American tribes shall be
23 conducted in a way that is mutually respectful of each party’s
24 sovereignty. Consultation shall also recognize the tribe’s potential
25 need for confidentiality with respect to sites that have traditional
26 tribal cultural significance.

27 (d) “Consulting parties” means the appropriate Native
28 American tribes, owners of property within the site’s boundaries,
29 the project proponent, *the lead agency*, and public agencies with
30 jurisdiction over the area in which the effects of a project may
31 occur or having principal responsibility for carrying out or
32 approving a project. Other individuals or organizations with a
33 demonstrated interest in the project, due to the nature of their legal,
34 cultural, or economic relation to the project or affected property,
35 may participate at the commission’s discretion. The commission
36 shall exercise that discretion in accordance with criteria adopted
37 by the commission.

38 (e) “Determination” means a final decision issued by the
39 commission, including a decision regarding the listing of a site in
40 the TTCS Register, whether a TTCS may be affected by a



1 proposed project, or whether a proposed project may result in a
2 substantial adverse change to a TTCS.

3 (f) “Eligible for listing in the TTCS Register” means a site that
4 is not listed in the TTCS Register, but if the commission were to
5 consider the site for listing pursuant to Section 5097.96, it would
6 likely find that the site meets the criteria for listing. The
7 determination of eligibility may be delegated to the executive
8 secretary. The executive secretary shall comply with criteria
9 adopted pursuant to subdivision (b) of Section 5097.96 and with
10 procedures set forth in Section 5097.96.1.

11 (g) “Gathering site” means an area where traditional food,
12 plants, or other materials or cultural objects, including, but not
13 limited to, baskets, tools, ropes, nets, ceremonial items, clothing,
14 and personal adornments that are used in a traditional practice by
15 a Native American tribe, are gathered, collected, assembled, or
16 maintained.

17 (h) “Lead agency” has the same meaning as the definition in
18 Section 21067.

19 (i) “Native American Contact List” means the list developed
20 and maintained by the commission pursuant to subdivision (d) of
21 Section 5097.94 that identifies those Native American tribes to be
22 notified and consulted pursuant to this chapter and the
23 requirements of the California Environmental Quality Act
24 (Division 13 (commencing with Section 21000)).

25 (j) “Native American tribe” means a federally recognized
26 California Indian tribe listed on the Federal Register and any
27 nonfederally recognized California Indian tribe, band, or nation
28 listed on the Native American Contact List maintained by the
29 commission.

30 (k) “Project” has the same meaning as the definition in Section
31 21065.

32 (l) *Substantial adverse change in a TTCS” means a direct or*
33 *reasonably foreseeable indirect change to the physical*
34 *characteristics of a TTCS in a manner that would diminish the*
35 *traditional cultural significance of the TTCS.*

36 (m) “Traditional Tribal Cultural Site” or “TTCS” means a site
37 listed in, or determined by the commission to be eligible for listing
38 in, the TTCS Register based on the criteria for listing established
39 by the commission through regulations adopted pursuant to
40 subdivision (b) of Section 5097.96. These criteria shall identify a



1 ~~TTCS as a site that is associated with the traditional beliefs,~~
2 ~~practices, lifeways, and ceremonial activities of a Native~~
3 ~~American~~ *TTCS as a site that is traditionally associated with, or*
4 *has served as the site for engaging in activities related to, the*
5 *traditional beliefs, cultural practices, or ceremonies of a Native*
6 *American* tribe. A TTCS ~~must~~ shall be a reasonably delineated
7 physical location identifiable by physical characteristics. The
8 TTCS Register is in no way intended to infringe on Native
9 American tribes' sovereign rights to define their own sites of
10 religious and cultural significance for their own purposes. The fact
11 that a tribe has not nominated a site for inclusion in the TTCS
12 Register may not be evidence that the site is not sacred or
13 significant.

14 ~~(mP~~
15 (n) "Traditional Tribal Cultural Site Register" or "TTCS
16 Register" means the Native American Traditional Tribal Cultural
17 Site Register established and maintained by the commission
18 pursuant to Section 5097.96.

19 SEC. 14. Section 5097.91 of the Public Resources Code is
20 amended to read:

21 5097.91. There is in state government a Native American
22 Heritage Commission, consisting of nine members appointed by
23 the Governor with the advice and consent of the Senate. The
24 executive secretary of the commission shall be appointed by the
25 Governor.

26 SEC. 15. Section 5097.92 of the Public Resources Code is
27 amended to read:

28 5097.92. (a) The nine-member commission shall be
29 composed of all the following members:

30 (1) Six members shall be elders, traditional people, or spiritual
31 leaders of California Native American tribes, nominated by Native
32 American organizations, tribes, or groups within the state. Two
33 members shall be from the northern region of the state, two
34 members from the central region, and two from the southern
35 region.

36 (2) Two members shall be recognized professionals in one or
37 more of the following disciplines: ethnohistory, archaeology,
38 anthropology, ethnography, or other related disciplines.



1 (3) One member shall represent the public or possess expertise
2 in fields of expertise the Governor deems necessary or desirable
3 to enable the commission to carry out its responsibilities.

4 (b) Each member of the commission shall have one vote.
5 Except as provided in subdivision (c), a majority of the total
6 appointed membership of the commission shall constitute a
7 quorum. Any action taken by the commission under this chapter
8 requires a majority vote of the members present at the meeting of
9 the commission, with a quorum being present, unless otherwise
10 specifically provided for in this chapter.

11 (c) (1) The commission may appoint regional committees of
12 three members of the commission to carry on investigations,
13 inquiries, or hearings pursuant to Sections 5097.96, 5097.96.1,
14 5097.96.2, and 5097.96.3. Each regional committee shall be
15 comprised of the two tribal commission members representing the
16 region where the subject TTCS or proposed TTCS is located. The
17 determination of the three-member committee shall become the
18 decision of the commission unless appealed to the full
19 commission.

20 (2) Appeals of decisions by the regional committee may be
21 filed by any party to the procedure within 30 days of issuance of
22 the regional committee's decision.

23 (3) All actions of the regional committee are subject to Section
24 5097.96.5.

25 SEC. 16. Section 5097.94 of the Public Resources Code is
26 amended to read:

27 5097.94. The commission shall have the following powers
28 and duties:

29 (a) For purposes of the California Environmental Quality Act
30 (Division 13 (commencing with Section 21000)) only, the
31 commission shall constitute a trustee agency having jurisdiction
32 by law over Native American archaeological resources and
33 TTCSs. The trustee agency status of the commission does not
34 impair or alter any sovereign rights that a Native American tribe
35 may have with respect to any of those resources.

36 (b) To identify and catalog places of special religious or social
37 significance to Native Americans, and known graves and
38 cemeteries of Native Americans on private lands. The
39 identification and cataloguing of known graves and cemeteries
40 shall be completed on or before January 1, 1984. The commission



1 shall notify landowners on whose property those graves and
2 cemeteries are determined to exist, and shall identify the Native
3 American tribe most likely descended from those Native
4 Americans who may be interred on the property.

5 (c) To make recommendations relative to sites listed in the
6 TTCS Register that are located on private lands, and are
7 inaccessible to Native Americans, and have cultural significance
8 to Native American tribes for acquisition by the state or other
9 public agencies for the purpose of facilitating or assuring access
10 thereto by the appropriate Native American tribes.

11 (d) To develop and maintain the Native American Contact List.
12 That list shall identify those Native American tribes eligible to be
13 notified or consulted pursuant to this chapter and ~~the requirements~~
14 ~~of the California Environmental Quality Act (Division 13~~
15 ~~(commencing with Section 21000)).~~ The list shall include all
16 Native American tribes, as defined in subdivision (j) of Section
17 5097.10 ~~in California, and a designated representative contact~~
18 ~~person and address for each tribe.~~ For purposes of this chapter, the
19 commission shall develop criteria to identify and include Native
20 American tribes that do not have federal recognition. *For the*
21 *purpose of complying with requirements relating to notice and*
22 *consultation, the list shall be organized by counties or portions of*
23 *counties to identify the Native American tribe or tribes that have*
24 *attached traditional cultural significance to each county or*
25 *portion thereof.*

26 (e) To make recommendations to the Legislature relative to
27 procedures *and incentives* that will voluntarily encourage private
28 property owners to preserve and protect sites listed in the TTCS
29 Register and to allow appropriate access to Native American tribes
30 for traditional tribal cultural activities.

31 (f) To employ and prescribe duties for staff members as
32 necessary to carry out the provisions of this chapter.

33 (g) To employ an attorney at law and assistant attorneys as
34 necessary. The attorney shall act as the attorney and legal adviser
35 of the commission, including *and shall have duties, including, but*
36 *not limited to,* representing the commission before ~~the courts.~~ ~~The~~
37 ~~written consent of the Attorney General is not required for the~~
38 ~~commission to be represented by a commission-employed~~
39 ~~attorney in court. However, the commission may request~~
40 ~~representation from the Attorney General.~~ *public agencies. If the*



1 *Attorney General is unable to represent the commission in a*
2 *judicial proceeding due to a conflict of interest or other reason, the*
3 *commission may be represented by the commission's attorney or a*
4 *private attorney pursuant to Section 11040 of the Government*
5 *Code.*

6 (h) To accept grants or donations, real or in kind, to carry out
7 the purposes of this chapter.

8 (i) To make recommendations to the Director of Parks and
9 Recreation and the California Arts Council relative to the
10 California State Indian Museum and other Indian matters touched
11 upon by department programs.

12 (j) To bring an action to prevent significant and irreparable
13 damage to, or assure appropriate access for Native Americans to,
14 a Native American sanctified cemetery, place of worship, religious
15 or ceremonial site, sacred shrine, or sites listed in the TTCS
16 Register located on public property, pursuant to Section 5097.97.
17 If the court finds that significant and irreparable damage will occur
18 or that appropriate access will be denied, and appropriate
19 mitigation measures are not available, it shall issue an injunction,
20 unless it finds, on clear and convincing evidence, that the public
21 interest and necessity require otherwise. The Attorney General
22 shall represent the commission, ~~if requested to do so under~~
23 ~~subdivision (g),~~ and the state in litigation concerning affairs of the
24 commission, unless the Attorney General has determined to
25 represent the agency against whom the commission's action is
26 directed, in which case the commission shall be authorized to
27 represent itself or employ other counsel as needed. In any action
28 to enforce the provisions of this subdivision the commission shall
29 introduce evidence showing that a cemetery, place, site, or shrine
30 has been historically regarded as a sacred or sanctified place by
31 Native American people and represents a place of unique historical
32 and cultural significance to ~~an Indian tribe or community.~~ *a Native*
33 *American tribe.*

34 (k) To request and utilize the advice and service of all federal,
35 state, local, and regional agencies.

36 (l) To assist Native ~~Americans~~ *American* tribes in obtaining
37 appropriate access to and protection for sites listed in the TTCS
38 Register that are located on public or private lands for ceremonial
39 or spiritual activities.



1 (m) To assist state agencies in any negotiations with agencies
2 of the federal government for the protection of TTCSs that are
3 located on federal lands.

4 (n) To mediate, upon application of either of the parties,
5 disputes arising between landowners and known descendents
6 relating to the treatment and disposition of Native American
7 human burials, skeletal remains, and items associated with Native
8 American burials.

9 (o) To assist interested landowners in developing agreements
10 with appropriate Native American tribes for leaving in place,
11 treating or disposing of, with appropriate dignity, the human
12 remains and any items associated with Native American burials.
13 The agreements shall provide protection to Native American
14 human burials and skeletal remains from vandalism and
15 inadvertent destruction and provide, where remains are not left in
16 place, for sensitive treatment and disposition of Native American
17 burials, skeletal remains, and associated grave goods consistent
18 with the planned use of, or the approved project on, the land. The
19 commission shall adopt guidelines governing the process and
20 requirements for Native American monitoring.

21 (p) To adopt criteria and procedures for the TTCS Register and
22 oversee the administration of the TTCS Register.

23 (q) To oversee the administration of, and participate in the
24 consultation process pursuant to, this chapter and adopt, as
25 necessary, consultation process criteria and procedures.

26 (r) To assist Native American tribes in obtaining access to and
27 protection for gathering sites that are not included in the TTCS
28 Register, and to develop criteria to assist in the identification of
29 feasible or potentially feasible measures to avoid or mitigate
30 ~~potential impacts to gathering sites that may occur as a result of a~~
31 ~~project.~~

32 ~~(s) To develop and maintain an informal site records check~~
33 ~~service to project proponents, interested landowners, or~~
34 ~~prospective landowners for the purpose of providing limited~~
35 ~~information on the presence or absence of a site that is listed in the~~
36 ~~TTCS Register, and that may be impacted by a proposed project,~~
37 ~~land acquisition, or land management practice on land in which the~~
38 ~~project proponent, interested landowner, or prospective land~~
39 ~~owner has a direct or imminent financial interest. The Native~~
40 *potential impacts to gathering sites.*



1 (s) To develop and maintain a site records check service for the
2 purpose of providing limited information, consistent with the
3 confidentiality requirements of Section 5097.96.5, on the presence
4 or absence of a site on the TTCS Register or a site that has been
5 nominated for listing. The Native American Heritage Commission
6 shall identify the appropriate Native American tribes on the Native
7 American Contact List for the site.

8 (t) To adopt rules and regulations, as necessary, to carry out the
9 provisions of this chapter in conformity with the provisions of
10 Chapter 3.5 (commencing with Section 11340) of Part 1 of
11 Division 3 of Title 2 of the Government Code. The commission
12 may not begin listing TTCSs on the TTCS Register, ~~nor~~ or make
13 determinations about whether a site is eligible to be listed in the
14 TTCS Register, until ~~it has adopted regulations to implement~~
15 ~~subdivision (b) of Section 5097.96~~ the 30th day after the date of
16 filing with the Secretary of State the initial set of regulations to
17 implement subdivision (d) of Section 5097.94, subdivisions (b) and
18 (c) of Section 5097.96, or subdivision (a) of Section 5097.96.5,
19 whichever occurs last. The commission may not make a
20 determination pursuant to Section 5097.96.1 or 5097.96.2, or
21 identify project changes or mitigation measures pursuant to
22 Section 5097.96.3 until the 121st day after the date of filing with
23 the Secretary of State the initial set of regulations to implement
24 subdivision (d) of Section 5097.94, subdivisions (b) and (c) of
25 Section 5097.96, or subdivision (a) of Section 5097.96.5,
26 whichever occurs last. The commission shall adopt these initial
27 sets of regulations within one year of the effective date of the act
28 that amended this section during the 2003–04 Regular Session of
29 the Legislature. In drafting and promulgating rules and regulations
30 that may have substantial effects on the Native American tribes,
31 the commission shall consult with, and allow for, active
32 participation by the Native American tribes.

33 SEC. 17. Section 5097.96 of the Public Resources Code is
34 amended to read:

35 5097.96.

36 (a) The Traditional Tribal Cultural Site Register or TTCS is
37 hereby established and shall be maintained and administered by
38 the commission. The TTCS Register is in no way intended to
39 infringe on Native American tribes' sovereign rights to define
40 their own sites of religious and cultural significance for their own



1 purposes. The fact that a tribe has not nominated a site for inclusion
2 in the TTCS Register may not be evidence that the site is not sacred
3 or significant.

4 (b) Consistent with the definition of TTCS in subdivision (l) of
5 Section 5097.10, the commission shall adopt regulations
6 establishing criteria to list sites in the TTCS Register. The
7 commission shall acknowledge that Native American tribes
8 possess special expertise in identifying TTCSs and shall consult
9 with them and encourage active participation in developing the
10 criteria consistent with subdivision (t) of Section 5097.94.

11 (c) The commission on its own initiative, or any appropriate
12 Native American tribe, may nominate a site for listing in the TTCS
13 Register. The commission shall adopt regulations establishing
14 procedures for the nomination and listing of sites in the TTCS
15 Register in a manner that shall protect the confidentiality concerns
16 of Native American tribes. The procedures shall provide the
17 following:

18 (1) All requests to the commission for nomination of sites in the
19 TTCS Register shall be supported by sufficient evidence to
20 facilitate meaningful review of the request.

21 (2) Prior to acting on the nomination of a site to be added to the
22 TTCS Register, the commission shall notify the Native American
23 tribe nominating the site, all owners of property within the site's
24 boundaries, and other appropriate Native American tribes, and
25 provide not less than 30 days for written comments on the
26 nomination. The commission shall accept and consider these
27 comments and any other comments it receives during the comment
28 period, and other appropriate information in determining whether
29 to list the site in the TTCS Register.

30 (3) Except where appropriate to maintain the confidentiality of
31 information concerning the specific identity, location, character,
32 or use of the proposed TTCS, the commission may seek and
33 consider the views of the public.

34 (4) The commission may hold a hearing to accept additional
35 comments regarding the requested nomination. Any hearing by
36 the commission to accept additional comments may be closed to
37 the public to maintain the confidentiality of information
38 concerning the specific identity, location, character, or use of the
39 site.



1 (5) The commission shall prepare proposed written findings to
2 support its determination concerning the site nominated for listing
3 in the TTCS Register. The proposed findings shall describe in
4 general terms the traditional cultural significance of the site, define
5 its boundaries, and identify any appropriate Native American
6 tribes. The commission shall provide notice of its proposed
7 determination and findings to the parties identified in paragraph
8 (2), and shall provide those parties 30 days to submit written
9 comments to the commission regarding the proposed
10 determination and findings. The commission's proposed
11 determination and findings shall constitute a final decision by the
12 commission if no comments are submitted to the commission
13 during the 30-day comment period. If written comments are
14 submitted to the commission during that comment period, the
15 commission shall consider the comments, and may modify the
16 proposed determination and findings before making a final
17 decision.

18 (d) The commission, in accordance with procedures it adopts,
19 shall provide notice of any decision to list a site in the TTCS
20 Register to the Native American tribe nominating the site, all
21 owners of property within the site's boundaries, and other
22 appropriate Native American tribes. The owner of property that
23 contains a site listed in the TTCS Register may at any time record
24 in the office of the county recorder of the county in which the site
25 is located, and the county recorder shall accept for recording, a
26 written notice of a registered TTCS in the form to be prescribed
27 by the commission. That notice may only refer generally and
28 without specificity to the identity, location, character, and use of
29 the registered TTCS on the property. Recording of a notice of a
30 registered TTCS shall satisfy any legal duty of the owner to
31 disclose material facts with respect to the registered TTCS.

32 (e) The commission shall maintain a list of the sites on the
33 TTCS Register. The list and all documents pertaining to the list
34 shall be exempt from disclosure as a public record pursuant to
35 subdivision (r) of Section 6254 of the Government Code.

36 (f) Notwithstanding subdivisions (c) and (d), the commission
37 shall develop an expedited procedure to list eligible sites identified
38 under subdivisions (g) and (h) on a priority basis in the TTCS
39 Register. The commission shall acknowledge that Native
40 American tribes possess special expertise in identifying TTCSs



1 and shall consult with them and encourage active participation in
2 developing the expedited procedure.

3 (g) Within two years of the ~~effective date of the act that added~~
4 ~~this subdivision~~ *date of filing with the Secretary of State the initial*
5 *set of regulations to implement subdivision (d) of Section 5097.94,*
6 *subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of*
7 *Section 5097.96.5, whichever occurs last,* the commission shall
8 ~~evaluate~~ *complete the evaluation of* the eligibility for listing in the
9 TTCS Register of any site previously identified, catalogued, or
10 listed by the commission as a site with traditional cultural
11 significance to Native Americans. If the commission makes a
12 preliminary decision not to include on the TTCS Register any site
13 previously so identified, catalogued, or listed by the commission,
14 it shall consult with the appropriate Native American tribe before
15 making a final decision.

16 (h) The commission may recommend sites listed in the TTCS
17 for listing by the State Historic Preservation Officer for inclusion
18 in the California Register. The commission may also determine
19 that a site that is listed in the National Register of Historic Places
20 or the California Register of Historical Resources may be eligible
21 for listing in the TTCS Register. In making this determination, the
22 commission shall consult with the State Historic Preservation
23 Officer, and the State Historic Preservation Officer shall cooperate
24 and assist the commission.

25 (i) Any determination by the commission to list a site on the
26 TTCS Register shall be exempt from the California
27 Environmental Quality Act (Division 13 (commencing with
28 Section 21000)).

29 SEC. 18. Section 5097.96.1 is added to the Public Resources
30 Code, to read:

31 ~~5097.96.1. (a) Notwithstanding any other provisions of this~~
32 ~~chapter, upon~~

33 *5097.96.1. (a) Upon receipt of a timely written request for*
34 *consultation pursuant to paragraph (1) of subdivision (d) of*
35 *Section 21097 by an appropriate Native American tribe, the*
36 *commission shall promptly initiate consultation with the*
37 *consulting parties to evaluate and determine whether any a TTCS*
38 *may be affected by the proposed project. In making this*
39 *determination, the commission shall examine whether the site is*
40 ~~listed in the TTCS Register.~~ *shall ascertain whether the site is*



1 *listed or is eligible for listing in the TTCS Register. Except where*
2 *appropriate to maintain the confidentiality of information*
3 *concerning the specific identity, location, character, or use of the*
4 *TTCS, the commission may consider the views of the public.*

5 (b) If the site is not registered in the TTCS Register, an
6 appropriate Native American tribe may ask the commission for a
7 determination that the site is eligible for listing in the TTCS
8 Register. The determination of eligibility may be delegated to the
9 executive secretary. The executive secretary shall, if the power is
10 delegated by the commission, provide a signed statement
11 determining whether in his or her opinion the site likely meets the
12 criteria for listing established pursuant to subdivision (b) of
13 Section 5097.96. In making the determination, the executive
14 secretary shall comply with criteria adopted by the commission.
15 The executive secretary shall seek the input of, and consult with,
16 *appropriate* consulting parties in making a determination pursuant
17 to subdivision ~~(e)~~.

18 ~~(e)~~. *An appeal of the executive secretary's determination to the*
19 *commission shall be made within 10 days of the executive*
20 *secretary's issuance of the determination, and the appeal shall be*
21 *heard and decided by the commission within 30 days of the appeal.*
22 *An appeal may not be made to a regional committee.*

23 (c) *If the commission determines that there is a TTCS present,*
24 *but the proposed project will not alter the physical characteristics*
25 *of a TTCS, that determination shall constitute a final*
26 *determination by the commission that the TTCS will not be affected*
27 *by the proposed project, and the commission's responsibilities*
28 *under this section as to that TTCS are fully discharged.*

29 (d) *If a TTCS is not excluded pursuant to subdivision (c), the*
30 *commission shall proceed, in accordance with Section 5097.96.2.*
31 *The obligation for the commission to proceed in accordance with*
32 *Section 5097.96.2 does not constitute substantial evidence that the*
33 *proposed project may result in a substantial adverse change in a*
34 *TTCS.*

35 (e) Not later than 45 days after receiving the notice required by
36 subdivision (d) of Section 21097, the commission shall notify in
37 writing, the lead agency, *the project proponent*, and any
38 appropriate Native American tribes that consulted with the
39 commission pursuant to this section, ~~of its determination as to~~
40 ~~whether any TTCS may be affected by the proposed project.~~



1 ~~(d) Where the commission determines pursuant to this section~~
2 ~~that a TTCS is not located on, or within, five miles of the site of~~
3 ~~the proposed project, that determination shall constitute a final~~
4 ~~decision by the commission that TTCSs are not affected by the~~
5 ~~proposed project, and the commission's official responsibilities~~
6 ~~under this section are fulfilled.~~

7 ~~(e) Where the commission determines that a TTCS is located~~
8 ~~on or within five miles of the site of the proposed project, the~~
9 ~~commission shall proceed, in accordance with Section 5097.96.2,~~
10 ~~to determine whether the project will result in a substantial adverse~~
11 ~~change to a TTCS. The obligation for the commission to proceed~~
12 ~~in accordance with Section 5097.96.2 does not constitute~~
13 ~~substantial evidence that the proposed project may result in a~~
14 ~~substantial adverse change to a TTCS. of its determination~~
15 ~~pursuant to this section. If the commission determines that the~~
16 ~~notice does not include all of the information required by~~
17 ~~subdivision (d) of Section 21097, the commission shall, within five~~
18 ~~days of receipt of the notice, notify the lead agency that the 45-day~~
19 ~~review period has not begun and identify the necessary data and~~
20 ~~information that is missing. The 45-day review period shall begin~~
21 ~~when the commission notifies the lead agency that the missing data~~
22 ~~and information has been received. The 45-day period may be~~
23 ~~extended 15 days upon request by the commission to the lead~~
24 ~~agency. Approval of longer or additional extension requests is in~~
25 ~~the discretion of the lead agency. If the commission has not issued~~
26 ~~its written determination or requested an extension, the~~
27 ~~commission's inaction shall be deemed a final decision by the~~
28 ~~commission that no TTCS is affected by the proposed project.~~

29 SEC. 19. Section 5097.96.2 is added to the Public Resources
30 Code, to read:

31 5097.96.2. (a) Not later than 75 days after notifying the lead
32 agency of its determination that a TTCS may be affected by the
33 proposed project, the commission shall notify in writing, the lead
34 agency, *the project proponent*, and any appropriate Native
35 American tribes that consulted with the commission, of its
36 determination as to whether a proposed project will result in a
37 substantial adverse change to a TTCS. ~~For purposes of this section,~~
38 ~~a substantial adverse change in a TTCS means a direct or~~
39 ~~reasonably foreseeable indirect change to the physical~~
40 ~~characteristics of a TTCS. The 75-day period may be extended 15~~



1 *days upon request by the commission to the lead agency. Approval*
2 *of longer or additional extension requests in the discretion of the*
3 *lead agency. If the commission has not issued its written*
4 *determination or requested an extension, the commission's*
5 *inaction shall be deemed a final decision by the commission that*
6 *the proposed project will not result in a substantial adverse change*
7 *in a TTCS.*

8 (b) Prior to making the determination pursuant to subdivision
9 (a), the commission shall seek the input of and consult with
10 appropriate consulting parties. The commission shall initiate that
11 consultation by providing notice within five days after making a
12 determination that a TTCS may be affected by the proposed
13 project to appropriate consulting parties. The consulting parties
14 shall have 30 days from receipt of the notice to provide written
15 comments to the commission regarding the potential for the
16 proposed project to result in a substantial adverse change ~~to~~ *in a*
17 *TTCS. The commission shall acknowledge that the appropriate*
18 *Native American tribes possess special expertise in participating*
19 *in this comment process. Except where appropriate to protect the*
20 *confidentiality of information concerning the specific identity,*
21 *location, character, or use of the TTCS, the commission may seek*
22 *and consider public comment and input.*

23 (c) The commission shall accept and consider written
24 comments submitted to the commission pursuant to subdivision
25 (b), prior to making a determination whether a proposed project
26 will result in a substantial adverse change to a TTCS. The
27 commission, in its discretion, may hold a hearing to accept
28 additional comments. A hearing by the commission to accept
29 additional comments may be closed to the public to maintain the
30 confidentiality of information concerning the specific identity,
31 location, character, or use of a TTCS.

32 (d) The commission shall prepare proposed written findings to
33 support its determination pursuant to subdivision (a). The
34 proposed findings shall describe the basis for the determination by
35 the commission. The commission shall provide notice of its
36 proposed determination and findings to the consulting parties who
37 were given notice pursuant to subdivision (b), and shall provide
38 those consulting parties with 10 days to submit written comments
39 to the commission regarding the proposed determination and
40 findings. The commission's proposed determination and findings



1 shall constitute a final decision by the commission if no comments
2 are submitted to the commission during the comment period. If
3 written comments are submitted to the commission during the
4 comment period, the commission shall consider the comments,
5 and modify the proposed determination and findings, in its
6 discretion, before making a final decision consistent with
7 procedures adopted by the commission.

8 (e) A determination by the commission pursuant to this section
9 is exempt from the California Environmental Quality Act
10 (Division 13 (commencing with Section 21000)).

11 SEC. 20. Section 5097.96.3 is added to the Public Resources
12 Code, to read:

13 5097.96.3. (a) Where the commission, all appropriate Native
14 American tribes who participated in the consultation process, and
15 the project proponent agree to incorporate project changes or
16 mitigation measures that would avoid or reduce substantial
17 adverse changes to in a TTCS to a less than significant level, the
18 commission shall identify those project changes or mitigation
19 measures in its findings and notice to the lead agency pursuant to
20 Section 5097.96.2.

21 (b) Where the commission, all appropriate Native American
22 tribes who participated in the consultation process, and the project
23 proponent do not agree to project changes or mitigation measures
24 that would avoid or reduce substantial adverse changes to a TTCS,
25 the commission shall identify project changes or mitigation
26 measures, if any, that would avoid or reduce substantial adverse
27 changes to a TTCS to a less than significant level in its findings and
28 notice to the lead agency pursuant to Section 5097.96.2.

29 (c) ~~A determination~~ *Identification of project changes or*
30 *mitigation measures* by the commission pursuant to this section is
31 exempt from the California Environmental Quality Act (Division
32 13 (commencing with Section 21000)).

33 SEC. 21. Section 5097.96.4 is added to the Public Resources
34 Code, to read:

35 5097.96.4. (a) An appropriate Native American tribe
36 nominating a site to the TTCS Register, owners of property within
37 the site's boundaries, or other consulting parties may seek judicial
38 ~~review of a final determination by the commission that a proposed~~
39 ~~project will result in a substantial adverse change to a TTCS. That~~
40 ~~action shall be brought as a petition for writ of mandate pursuant~~



1 *review of a determination by the commission within 90 days of a*
2 *determination regarding the listing of a site in the TTCS Register*
3 *and within 30 days of any other determination. That action shall*
4 *be brought against the commission as a petition for a writ of*
5 *mandate pursuant to Section 1094.5 of the Code of Civil*
6 *Procedure.*

7 (b) In a proceeding, whether in a trial or appellate court,
8 challenging a determination of the commission, the court shall
9 protect the confidentiality of any information that would create a
10 risk of harm to the TTCS by disclosing, for example, its specific
11 identity, location, character, or use. If and to the extent there is a
12 risk of harm, the court shall conduct its proceedings in camera and
13 shall seal records of the proceeding and papers filed with the court.
14 In determining whether there is a risk of harm to a TTCS, the court
15 may ask the commission to file a brief addressing that issue and
16 may, in the interim, seal records and papers and conduct any
17 hearings in camera until it makes a final determination on the risk
18 of harm issue.

19 SEC. 22. Section 5097.96.5 is added to the Public Resources
20 Code, to read:

21 5097.96.5. (a) The commission shall adopt regulations
22 establishing procedures to maintain the confidentiality of
23 information concerning the specific identity, location, character,
24 or use of a TTCS.

25 (b) Notwithstanding the California Public Records Act
26 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
27 Title 1 of the Government Code), the Bagley-Keene Open Meeting
28 Act (Article 9 (commencing with Section 11120) of Chapter 1 of
29 Part 1 of Division 3 of Title 2 of the Government Code), or any
30 other law, no information obtained as a result of, or in connection
31 with, a nomination or consultation under this chapter that contains
32 a reference pertaining to the specific identity, location, character,
33 or use of a TTCS, may be released, except as provided in
34 subdivision (c). For purposes of this section, “information”
35 includes, but is not limited to, documents, records, the TTCS
36 Register itself, nomination forms, declarations, reports, maps,
37 letters, transcripts, minutes, comments, determinations, and
38 findings.

39 (c) The commission, owners of property within the site’s
40 boundaries, the project proponent, the appropriate Native



1 American tribes, other consulting parties authorized under this
2 chapter, and their respective attorneys and representatives may,
3 consistent with any procedures the commission adopts, access and
4 share with each other information for the purpose of participating
5 in the consultation process pursuant to this chapter.

6 (d) A person who intentionally releases information, knowing
7 that it is required to be held confidential pursuant to this section,
8 is guilty of a misdemeanor punishable by a fine of ten thousand
9 dollars (\$10,000) or by imprisonment in the county jail for not
10 more than one year, or both.

11 (e) This section does not apply in a case in which all appropriate
12 Native American tribes waive the application of this section.

13 SEC. 23. Section 5097.97 of the Public Resources Code is
14 amended to read:

15 5097.97. In the event that a Native American organization,
16 tribe, group, or individual advises the commission that a proposed
17 action by a public agency may cause significant and irreparable
18 damage to a Native American sanctified cemetery, place of
19 worship, religious or ceremonial site, or sacred shrine located on
20 public property, or may bar appropriate access thereto by Native
21 Americans, the commission shall conduct an investigation as to the
22 effect of the proposed action. Where the commission finds, after
23 a public hearing, that the proposed action would result in damage
24 or interference, the commission may recommend mitigation
25 measures for consideration by the public agency proposing to take
26 the action. If the public agency fails to accept the mitigation
27 measures, and if the commission finds that the proposed action
28 would do significant and irreparable damage to a Native American
29 sanctified cemetery, place of worship, religious or ceremonial site,
30 or sacred shrine located on public property, the commission may
31 ask the Attorney General to take appropriate legal action pursuant
32 to ~~subdivision (j)~~ of Section 5097.94.

33 SEC. 24. Section 5097.98 of the Public Resources Code is
34 amended to read:

35 5097.98. (a) Whenever the commission receives notification
36 of a discovery of Native American human remains from a county
37 coroner pursuant to subdivision (c) of Section 7050.5 of the Health
38 and Safety Code, it shall immediately notify those persons it
39 believes to be most likely descended from the deceased Native
40 American. The ~~decedents~~ *descendants* may, with the permission



1 of the owner of the land, or his or her authorized representative,
2 inspect the site of the discovery of the Native American remains
3 and may recommend to the owner or the person responsible for the
4 excavation work means for ~~treating~~ *avoiding, treating*, or
5 disposing of, with appropriate dignity, the human remains and any
6 associated grave goods. The descendants shall complete their
7 inspection and make their recommendation within 24 hours of
8 their notification by the Native American Heritage Commission.
9 The recommendation may include the scientific removal and
10 nondestructive analysis of human remains and items associated
11 with Native American burials.

12 (b) Whenever the commission is unable to identify a
13 descendent, or the descendent identified fails to make a
14 recommendation, or the landowner or his or her authorized
15 representative rejects the recommendation of the descendent, and
16 the mediation provided for in subdivision (n) of Section 5097.94
17 fails to provide measures acceptable to the landowner, the
18 landowner or his or her authorized representative shall reinter the
19 human remains and items associated with Native American burials
20 with appropriate dignity on the property in a location not subject
21 to further subsurface disturbance.

22 (c) Notwithstanding the provisions of Section 5097.9, the
23 provisions of this section, including those actions taken by the
24 landowner or his or her authorized representative to implement
25 this section and any action taken to implement an agreement
26 developed pursuant to subdivision (o) of Section 5097.94, shall be
27 exempt from the requirements of the California Environmental
28 Quality Act (Division 13 (commencing with Section 21000)).

29 (d) Notwithstanding the provisions of Section 30244, the
30 provisions of this section, including those actions taken by the
31 landowner or his or her authorized representative to implement
32 this section, and any action taken to implement an agreement
33 developed pursuant to subdivision (o) of Section 5097.94 shall be
34 exempt from the requirements of the California Coastal Act of
35 1976 (Division 20 (commencing with Section 30000)).

36 SEC. 25. Section 5097.99 of the Public Resources Code is
37 amended to read:

38 5097.99. (a) A person may not obtain or possess any Native
39 American artifacts or human remains that are taken from a Native
40 American grave or cairn on or after January 1, 1984, except as



1 otherwise provided by law or in accordance with an agreement
2 reached pursuant to subdivision (o) of Section 5097.94 or pursuant
3 to Section 5097.98.

4 (b) A person who knowingly or willfully obtains or possesses
5 any Native American artifacts or human remains that are taken
6 from a Native American grave or cairn after January 1, 1988,
7 except as otherwise provided by law or in accordance with an
8 agreement reached pursuant to subdivision (o) of Section 5097.94
9 or pursuant to Section 5097.98, is guilty of a felony that is
10 punishable by imprisonment in the state prison.

11 (c) A person who removes, without authority of law, any
12 Native American artifacts or human remains from a Native
13 American grave or cairn with an intent to sell or dissect or with
14 malice or wantonness is guilty of a felony that is punishable by
15 imprisonment in the state prison.

16 SEC. 26. *Section 5097.993 is added to the Public Resources*
17 *Code, to read:*

18 5097.993. *If any provision of this chapter or the application*
19 *thereof to any person or circumstance is held invalid, that*
20 *invalidity may not affect other provisions or applications of this*
21 *chapter that can be given effect without the invalid provision or*
22 *application thereof, and to this end the provisions of this chapter*
23 *are severable.*

24 SEC. 27. Section 5097.995 of the Public Resources Code is
25 amended to read:

26 5097.995. (a) (1) Any person who unlawfully and
27 maliciously excavates upon, removes, destroys, injures, or defaces
28 a Native American historic, cultural, or sacred site, that is listed or
29 may be eligible for listing in the California Register of Historic
30 Resources pursuant to Section 5024.1 or the TTCS Register
31 pursuant to Section 5097.96, including any historic or prehistoric
32 ruins, any burial ground, any archaeological or historic site, any
33 inscriptions made by Native Americans at such a site, any
34 archaeological or historic Native American rock art, or any
35 archaeological or historic feature of a Native American historic,
36 cultural, or sacred site is guilty of a misdemeanor if the act was
37 committed with specific intent to vandalize, deface, destroy, steal,
38 convert, possess, collect, or sell a Native American historic,
39 cultural, or sacred artifact, art object, inscription, or feature, or site
40 and the act was committed as follows:



1 (A) On public land.

2 (B) On private land, by a person, other than the landowner, as
3 described in subdivision (b).

4 (2) A violation of this section is punishable by imprisonment
5 in the county jail for up to one year, by a fine not to exceed ten
6 thousand dollars (\$10,000), or by both that fine and imprisonment.

7 (b) This section does not apply to any of the following:

8 (1) Any act taken in accordance with, or pursuant to, an
9 agreement entered into pursuant to subdivision (o) of Section
10 5097.94.

11 (2) Any action taken pursuant to Section 5097.98.

12 (3) Any act taken in accordance with *Section 21097 and other*
13 *applicable sections of the California Environmental Quality Act*
14 *(Division 13 (commencing with Section 21000)).*

15 (4) Any act taken in accordance with the National
16 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

17 (5) Any act authorized under the Z'berg-Nejedly Forest
18 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)
19 of Part 2 of Division 4).

20 (6) Any action taken with respect to a conservation easement
21 in accordance with Chapter 4 (commencing with Section 815) of
22 Division 2 of the Civil Code, or any similar nonperpetual
23 enforceable restriction that has as its purpose the conservation,
24 maintenance, or provision of physical access of Native Americans
25 to one or more Native American historic, cultural, or sacred sites,
26 or pursuant to a contractual agreement for that purpose to which
27 most likely descendents of historic Native American inhabitants
28 are signatories.

29 (7) Any otherwise lawful act undertaken by the owner, or an
30 employee or authorized agent of the owner acting at the direction
31 of the owner, of land on which artifacts, sites, or other Native
32 American resources covered by this section are found, including,
33 but not limited to, farming, ranching, forestry, improvements,
34 investigations into the characteristics of the property conducted in
35 a manner that minimizes adverse impacts unnecessary to that
36 purpose, and the sale, lease, exchange, or financing of real
37 property.

38 (8) Research conducted under the auspices of an accredited
39 postsecondary educational institution or other legitimate research
40 institution on public land in accordance with applicable permitting



1 requirements or on private land in accordance with otherwise
2 applicable law.

3 ~~SEC. 27. Section 21084 of the Public Resources Code is~~
4 ~~amended to read:~~

5 ~~21084. (a) The guidelines prepared and adopted pursuant to~~
6 ~~Section 21083 shall include a list of classes of projects that have~~
7 ~~been determined not to have a significant effect on the~~
8 ~~environment and that shall be exempt from this division. In~~
9 ~~adopting the guidelines, the Secretary of the Resources Agency~~
10 ~~shall make a finding that the listed classes of projects do not have~~
11 ~~a significant effect on the environment.~~

12 ~~(b) A project that may result in damage to scenic resources,~~
13 ~~including, but not limited to, trees, historic buildings, rock~~
14 ~~outcroppings, or similar resources, within a highway designated as~~
15 ~~an official state scenic highway, pursuant to Article 2.5~~
16 ~~(commencing with Section 260) of Chapter 2 of Division 1 of the~~
17 ~~Streets and Highways Code, may not be exempted from this~~
18 ~~division pursuant to subdivision (a). This subdivision does not~~
19 ~~apply to improvements as mitigation for a project for which a~~
20 ~~negative declaration has been approved or an environmental~~
21 ~~impact report has been certified.~~

22 ~~(c) A project located on a site that is included on any list~~
23 ~~compiled pursuant to Section 65962.5 of the Government Code~~
24 ~~may not be exempted from this division pursuant to subdivision~~
25 ~~(a).~~

26 ~~(d) The changes made to this section by Chapter 1212 of the~~
27 ~~Statutes of 1991 apply only to projects for which applications have~~
28 ~~not been deemed complete on or before January 1, 1992, pursuant~~
29 ~~to Section 65943 of the Government Code.~~

30 ~~(e) A project that may cause a substantial adverse change in the~~
31 ~~significance of an historical resource, as specified in Section~~
32 ~~21084.1, may not be exempted from this division pursuant to~~
33 ~~subdivision (a).~~

34 ~~(f)~~

35 *SEC. 28. Section 21084.3 is added to the Public Resources*
36 *Code, to read:*

37 *21084.3. (a) A project that may cause a substantial adverse*
38 *change, as defined in subdivision (l) of Section 5097.10, in a site*
39 *that is listed in the Traditional Tribal Cultural Site Register*



1 established pursuant to Section 5097.95 may not be exempted
2 from this division pursuant to subdivision (a) of Section 21084.

3 (b) *This section shall become operative on the 121st day after*
4 *the date of filing with the Secretary of State the initial set of*
5 *regulations adopted by the Native American Heritage Commission*
6 *to implement subdivision (d) of Section 5097.94, subdivisions (b)*
7 *and (c) of Section 5097.96, or subdivision (a) of Section*
8 *5097.96.5, whichever occurs last.*

9 ~~SEC. 28.~~

10 SEC. 29. Section 21097 is added to the Public Resources
11 Code, to read:

12 21097. (a) A project that may cause a substantial adverse
13 change in a TTCS, as defined in subdivision ~~(l)~~ (m) of Section
14 5097.10, is a project that may have a significant effect on the
15 environment. For purposes of this section, a TTCS is a site listed
16 in, or determined by the Native American Heritage Commission
17 to be eligible for listing in, the Traditional Tribal Cultural Site
18 Register established under Section 5097.96. A site that is not listed
19 in the TTCS Register is not precluded from being afforded
20 protection under this division so long as the commission
21 determines that the site is eligible for listing pursuant to
22 subdivision (b) of Section 5097.96.1.

23 ~~(b) Substantial adverse change in a TTCS means a direct or~~
24 ~~reasonably foreseeable indirect change to the physical~~
25 ~~characteristics of a TTCS.~~

26 (b) *As used in this section, “substantial adverse change in a*
27 *TTCS” has the same meaning as in subdivision (l) of Section*
28 *5097.10.*

29 (c) For purposes of this section, “Native American tribes” and
30 “appropriate Native American tribes” have the meaning provided
31 in subdivisions (a) and (j), respectively, of Section 5097.10.

32 (d) At the time that a lead agency determines that an activity is
33 a project and is not exempt from this division, the lead agency shall
34 provide written notice of the proposed project to the Native
35 American tribes identified on the Native American Contact List
36 pursuant to subdivision (d) of Section 5097.94 and to the Native
37 American Heritage Commission. The notice shall do all of the
38 following:

39 (1) Inform Native American tribes of their right to request
40 consultation, including for a determination of a site’s eligibility for



1 listing in the TTCS Register pursuant to 5097.96.1, with the Native
2 American Heritage Commission within 20 days of the receipt of
3 notice by certified mail.

4 (2) Provide sufficient information describing the proposed
5 project, including a project map, to enable the Native American
6 tribes to consult with the commission to identify any TTCS that
7 may be affected by the proposed project.

8 (3) Include a copy of the service list.

9 (e) Upon receipt of a timely written request for consultation
10 pursuant to *paragraph (1) of subdivision (d)*, the Native American
11 Heritage Commission shall promptly initiate consultation,
12 consistent with Section 5097.96.1, to evaluate and determine
13 whether a TTCS may be affected by the proposed project. Nothing
14 in this section precludes the Native American tribes from electing
15 to participate through the regular public comment process
16 afforded by this division.

17 (f) ~~The~~ *After receiving notice from the lead agency pursuant to*
18 *subdivision (d), the commission shall notify the lead agency and*
19 *any appropriate Native American tribes that consulted with the*
20 *commission, in writing of its determination not later than 45 days*
21 ~~*after receiving the notice from the lead agency pursuant to*~~
22 ~~*subdivision (d) the expiration of the period determined pursuant*~~
23 *to subdivision (e) of Section 5097.96.1.* Any written notice by the
24 commission determining that there are no TTCSs affected by the
25 proposed project shall be final and no further consultation is
26 required under this division.

27 (g) Whenever the Native American Heritage Commission
28 determines that a TTCS may be affected by the proposed project
29 pursuant to subdivision (f), the commission shall proceed with
30 consultation, in accordance with Sections 5097.96.1 and
31 5097.96.2, to determine whether the proposed project will cause
32 a substantial adverse change in a TTCS, and to identify project
33 changes or mitigation measures, *if any*, that would avoid or reduce
34 the substantial adverse change. ~~The~~ *After notifying the lead agency*
35 *that a TTCS may be affected by the proposed project, the*
36 *commission shall notify in writing, the lead agency, project*
37 *proponents, and any appropriate Native American tribes that*
38 *consulted with the commission pursuant to this section, of this*
39 ~~*determination not later than 75 days after notifying the lead agency*~~
40 ~~*that a TTCS may be affected by the proposed project. Any the*~~



1 *expiration of the period determined pursuant to subdivision (a) of*
2 *Section 5097.96.2. Any written notice by the commission*
3 *determining that a proposed project will not result in a substantial*
4 *adverse change to a TTCS shall constitute substantial evidence*
5 *upon which the lead agency may rely.*

6 (h) To facilitate the consultation process, the lead agency shall,
7 in cooperation with the commission, arrange for a visit to the
8 project site by authorized representatives of appropriate Native
9 American tribes (as determined by the commission) if the
10 following conditions are met:

11 (1) The appropriate Native American tribe requests, in writing,
12 lead agency assistance to arrange for a visit to the project site.

13 (2) The request demonstrates that the visit is necessary ~~either~~
14 to show the location or boundaries of a TTCS, *evaluate the*
15 *potential for substantial adverse change to a TTCS*, or assist in the
16 development of ~~on-site~~ *project changes or* mitigation measures.

17 (3) The request is submitted to the lead agency prior to the close
18 of public comment period.

19 (4) The lead agency secures permission from the landowner or
20 can escort the authorized representative onto the property within
21 existing authority to carry out inspections on the property.

22 (i) Where the commission determines that a proposed project
23 will result in a substantial adverse change to a TTCS, the lead
24 agency shall do the following:

25 (1) If the project proponent, the commission, and all
26 appropriate Native American tribes who participated in the
27 consultation process agree, as a result of the consultation required
28 by subdivision (g), to incorporate *project* changes or mitigation
29 measures that will avoid or reduce potential adverse changes to a
30 TTCS to below a level of significance, the lead agency shall
31 conclude that any adverse changes to a TTCS are less than
32 significant. The project changes or mitigation measures that
33 provide the basis for the lead agency's determination shall be
34 identified in a confidential appendix to the final environmental
35 impact report or mitigated negative declaration. The project
36 changes or mitigation measures identified in the final
37 environmental impact report or mitigated negative declaration,
38 together with the concurrence of the appropriate Native American
39 tribes who participated in the consultation process, the project
40 proponent and the commission, shall constitute substantial



1 evidence supporting the lead agency’s conclusion that adverse
2 changes in a TTCS are less than significant.

3 (2) If the project proponent, the commission, and all
4 appropriate Native American tribes who participated in the
5 consultation process do not agree to *project* changes or mitigation
6 measures, as a result of the consultation required by subdivision
7 (g), the commission shall evaluate and provide a written
8 recommendation to the lead agency identifying project changes or
9 mitigation measures, *if any*, that would avoid or reduce potential
10 adverse changes to a TTCS. The lead agency, when making
11 findings required by paragraph (1) of subdivision (a) of Section
12 21081, or when adopting a mitigated negative declaration
13 pursuant to paragraph (2) of subdivision (c) of Section 21080, shall
14 consider the recommendation of the commission and *shall* adopt
15 all ~~feasible~~ project changes or mitigation measures necessary to
16 avoid or reduce substantial adverse changes to any TTCS
17 identified pursuant to this section *that the lead agency determines,*
18 *based on substantial evidence in light of the whole record, are*
19 *feasible.*

20 (j) (1) ~~Notwithstanding~~ *In addition to the findings required by*
21 *subdivision (b) of Section 21081, a public agency may not*
22 *approve or carry out a project that will result in a substantial*
23 *adverse change in a TTCS unless it has provided notice to, and*
24 *made a good faith effort to consult with the Native American*
25 *Heritage Commission and all appropriate Native American tribes,*
26 *and unless the public agency finds that all ~~available~~ means for*
27 *preserving the TTCS have been considered to the maximum extent*
28 *possible.*

29 ~~(2) A public agency may not approve, carry out, or subsidize~~
30 ~~with state funds a project on state lands or federal lands that will~~
31 ~~practicable.~~

32 (2) *If a project located on state lands or federal lands managed*
33 *by the state will result in a substantial adverse change in a TTCS,*
34 *a public agency may not approve, carry out, or subsidize the*
35 *project unless the lead agency, based on substantial evidence in the*
36 *record, does one of the following:*

37 (A) *Makes the finding described in paragraph (1) or (2) of*
38 *subdivision (a) of Section 21081, or both, with respect to the*
39 *project’s affect on the TTCS.*



1 (B) Finds there is no legal or feasible way to accomplish the
2 project purpose without causing the substantial adverse change, all
3 feasible mitigation or avoidance measures have been incorporated
4 into the project, and there is an overriding environmental, public
5 health, or safety reason to approve the project.

6 ~~These findings~~ *The findings described in subparagraphs (A)*
7 *and (B) may be made only after the lead agency provides 30 days*
8 *notice to any appropriate Native American tribes and an*
9 *opportunity for those tribes to comment on the proposed finding.*
10 *For purposes of this paragraph, “federal lands” means any land*
11 *or interest in land owned by the United States, including a*
12 *leasehold interest held by the United States, except for Indian trust*
13 *lands. “Indian trust lands” are lands held in trust by the United*
14 *States on behalf of tribal governments or individuals. Indian trust*
15 *lands are predominantly, though not solely, reservation lands.*

16 (k) For purposes of this division, the Native American Heritage
17 Commission shall be considered a trustee agency having
18 jurisdiction by law over Native American archeological resources
19 and TTCSs. The trustee agency status of the commission may not
20 be construed to impair or alter any sovereign rights a Native
21 American tribe may have with respect to any of those resources.

22 (l) (1) All regulatory programs certified by the Secretary for
23 Resources pursuant to Section 21080.5 shall comply with the
24 ~~provisions of this section and any other applicable sections~~
25 ~~pertaining to TTCSs under this division.~~ *requirements set forth in*
26 *this section. If a state agency’s certified regulatory program does*
27 *not comply with all of the requirements of this section by January*
28 *1, 2005, that agency shall submit to the secretary an explanation*
29 *detailing why the certified regulatory program should remain*
30 *unchanged and how the program nevertheless meets the objectives*
31 *of Chapter 1.75 (commencing with Section 5097.9) of Division 5*
32 *and any other applicable provisions of this division that pertain to*
33 *TTCSs. The explanation shall include all of the following:*

34 (A) *A written summary and overview of the certified regulatory*
35 *program, including a detailed description of its analysis of impacts*
36 *to TTCSs or Native American archaeological resources.*

37 (B) *Citations to the program’s provisions for notice and*
38 *consultation with appropriate Native American tribes and the*
39 *Native American Heritage Commission.*



1 (C) Citations to the program's provisions incorporating the
2 Native American Heritage Commission's final determinations of
3 substantial adverse change into any findings or determinations
4 made by the agency administering the certified regulatory
5 program.

6 (D) A written summary of how a meaningful consultation
7 process, as defined in Section 5097.10, was incorporated.

8 (2) On or before January 1, 2006, the Secretary of the
9 Resources Agency shall notify the state agency as to whether its
10 program meets the objectives of Chapter 1.75 (commencing with
11 Section 5097.9) of Division 5 and any other applicable provisions
12 of this division that pertain to TTCSs. If the secretary determines
13 that the program does not meet those objectives, the secretary shall
14 suggest changes to the program or withdraw certification. The
15 secretary shall specify in writing the reasons for his or her
16 determination. The secretary shall consult with the Native
17 American Heritage Commission in carrying out this subdivision.

18 (m) In the case of a project described in subdivision (c) of
19 Section 21065, the project proponent may request, prior to the
20 filing of an application with the lead agency, that the lead agency
21 provide notice pursuant to subdivision (d).

22 (n) Any proceeding *or finding* under this section is subject to
23 the confidentiality provisions of Section 5097.96.5.

24 (o) In all actions or proceedings brought pursuant to this
25 section, including the hearing of an action or proceeding on appeal
26 from the decision of a lower court, all courts shall protect the
27 confidentiality of information that would create a risk of harm to
28 the TTCS by disclosing, for example, its specific identity, location,
29 character, or use. If and to the extent there is a risk of harm, the
30 court shall conduct its proceedings in camera and shall seal records
31 of the proceeding and papers filed with the court. In determining
32 whether there is a risk of harm to a TTCS, the court may ask the
33 commission to file a brief addressing that issue and may, in the
34 interim, seal records and papers and conduct hearings in camera
35 until it makes a final determination on the risk of harm issue.

36 ~~(p) Notwithstanding Section 21177, any appropriate Native~~
37 ~~American tribe that consulted with the Native American Heritage~~
38 ~~Commission pursuant to this section may bring an action or~~
39 ~~proceeding to attack, review, set aside, void, or annul the acts or~~
40 ~~decision of a public agency pursuant to Section 21167.~~



1 (p) Any person who consulted with the Native American
2 Heritage Commission pursuant to Section 5097.96.1, 5097.96.2,
3 or 5097.96.3 and presented to the Native American Heritage
4 Commission and the lead agency an objection to the approval of
5 the project and the alleged grounds for noncompliance with this
6 division, orally or in writing during the comment period, is deemed
7 to have complied with Section 21177; provided, however, that any
8 action or proceeding to challenge a determination of the Native
9 American Heritage Commission pursuant to Chapter 1.75
10 (commencing with Section 5097.09) of Division 5 shall be brought
11 pursuant to Section 5097.96.4.

12 (q) (1) For a project defined by subdivision (c) of Section
13 21065, the lead agency shall, prior to a determination pursuant to
14 Section 21080.1, consult with the Native American Heritage
15 Commission and the appropriate Native American tribes to
16 identify the existence of, or the probable likelihood of, Native
17 American human remains and associated grave goods.

18 (2) If, as a result of the consultation required by paragraph (1),
19 the lead agency determines that Native American human remains
20 and associated grave goods may be disturbed, the lead agency shall
21 ensure that the following steps are completed prior to approval of
22 the project:

23 (A) Develop an avoidance and mitigation plan in consultation
24 with any appropriate Native American tribes, and the Native
25 American Heritage Commission to prevent or minimize
26 destruction, removal, or reburial of the Native American human
27 remains and associated grave goods. The plan shall address the
28 potential discovery of Native American human remains and
29 associated grave goods, and potential reburial onsite and
30 disposition of cultural resources.

31 (B) The project proponent shall employ a Native American
32 monitor to monitor ground disturbance activities associated with
33 the proposed project in areas where Native American human
34 remains, associated grave goods, and cultural resources may be
35 discovered. Guidelines for monitoring adopted pursuant to
36 subdivision (o) of Section 5097.94 may be adopted by the Native
37 American Heritage Commission. In selecting a Native American
38 monitor, the project proponent shall give preference to Native
39 Americans with traditional ties to the project area.

40 ~~SEC. 29.—~~



1 *(r) No lead agency and no responsible agency may approve a*
2 *project in any area that is designated as Class C (Controlled Use)*
3 *or Class L (Limited Use) lands, or designated as an Area of*
4 *Critical Environmental Concern under the California Desert*
5 *Conservation Area Plan of 1980, as amended, by the Bureau of*
6 *Land Management of the United States Department of the Interior,*
7 *pursuant to Section 1781 of Title 43 of the United States Code, in*
8 *any case where the federal Advisory Council on Historic*
9 *Preservation, pursuant to Section 106 of the National Historic*
10 *Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), has*
11 *recommended to any federal agency that approval for the project*
12 *be denied because the project would effectively destroy the*
13 *historical resources in the project area.*

14 *(s) This section shall become operative on the 121st day after*
15 *the date of filing with the Secretary of State the initial set of*
16 *regulations adopted by the Native American Heritage Commission*
17 *to implement subdivision (d) of Section 5097.94, subdivisions (b)*
18 *and (c) of Section 5097.96, or subdivision (a) of Section*
19 *5097.96.5, whichever occurs last.*

20 *(t) If any provision of this section or the application thereof to*
21 *any person or circumstance is held invalid, that invalidity may not*
22 *affect other provisions or applications of this section that can be*
23 *given effect without the invalid provision or application thereof,*
24 *and to this end the provisions of this section are severable.*

25 *(u) This section does not apply to a project that the United*
26 *States Secretary of Defense has determined is necessary for*
27 *national security.*

28 **SEC. 30.** No reimbursement is required by this act pursuant
29 to Section 6 of Article XIII B of the California Constitution for
30 certain costs that may be incurred by a local agency or school
31 district because in that regard this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 However, notwithstanding Section 17610 of the Government
38 Code, if the Commission on State Mandates determines that this
39 act contains other costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made



1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code. If the statewide cost of the
3 claim for reimbursement does not exceed one million dollars
4 (\$1,000,000), reimbursement shall be made from the State
5 Mandates Claims Fund.

6 ~~SEC. 30.~~

7 *SEC. 31.* This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety
9 within the meaning of Article IV of the Constitution and shall go
10 into immediate effect. The facts constituting the necessity are:

11 In order to stem the continuing loss of sacred sites as soon as
12 possible, it is necessary that this act go into effect immediately.

